

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : CASE NO. 5-19-03635
CLAUDE C. MOLLENTHIEL :
A/K/A CLAUDE CARL MOLLENTHIEL :
A/K/A CLAUDE MOLLENTHIEL and :
TAMAYO MOLLENTHIEL :
A/K/A TAMAYO S. MOLLENTHIEL :
A/K/A TAMAYO SHIMOSAKODA :
MOLLENTHIEL :

Debtors. : CHAPTER 13

TAMAYO MOLLENTHIEL :
A/K/A TAMAYO S. MOLLENTHIEL :
A/K/A TAMAYO SHIMOSAKODA :
MOLLENTHIEL :

Plaintiff, :

vs. :

ADV. NO.: _____

MRC RECOVERY, INC. :
& :
CHARLES J. DEHART, III, ESQ. :
CHAPTER 13 TRUSTEE :

Defendants :

COMPLAINT TO DETERMINE THE VALIDITY AND EXTENT OF JUDGMENT LIEN
UNDER 11 U.S.C. SECTION 506(d) AND 11 U.S.C. SECTION 1322 (b)(2)

AND NOW COMES, Tamayo Mollenthiel, f/k/a Tamayo Matsumoto, by and through her
counsel, Tullio DeLuca, Esq., and files this Complaint and states the following:

1. On August 28, 2019, Claude C. Mollenthiel and Tamayo Mollenthiel, f/k/a Tamayo
Matsumoto (hereinafter "Plaintiff/ Debtor") filed a petition under Chapter 13 Title 11, U.S. Code
in the United States Bankruptcy Court for the Middle District of Pennsylvania.

2. Charles J. DeHart, III, Esquire was appointed the standing Chapter 13 Trustee in the
above case.

3. Defendant is MRC Recovery, Inc., with a mailing address of 111 College Rd., #14,
Selden, NY 11784, a judgment creditor of Tamayo Mollenthiel f/k/a Tamayo Matsumoto at the

Selden, NY 11784, a judgment creditor of Tamayo Mollenthien f/k/a Tamayo Matsumoto at the time of the filing of the Chapter 13 Bankruptcy Petition.

4. This Court has jurisdiction under 28 U.S.C. Section 1334 and 28 U.S.C. Section 157.

5. This is an action under 11 U.S.C. Section 506(d) and 11 U.S.C. Section 1322(b)(2) to determine the validity and extent of Defendant's secured claim against Debtor's real property.

6. An action to determine the validity, extent and priority of a lien is a core proceeding under 28 U.S.C. Section 157(b)(K) which a bankruptcy judge may issue final order on. See In re Szerwinski, 2011 WL 2552012 (Bankr. N.D. Ohio June 27, 2011) (concluding, without analysis, that action by trustee to avoid a lien pursuant to 11 U.S.C. § 544 is within the court's constitutional authority); In re Hudson, 2011 WL 3583278 (Bankr. W.D. Mich. Aug. 16, 2011) (acknowledging that lien avoidance action under 11 U.S.C. § 544 involved issues of state law, court nonetheless said that it "cannot envision a core proceeding that is more 'core' than lien avoidance"); In re Salander O'Reilly Galleries, 2011 WL 2837494 (Bankr. S.D.N.Y. July 18, 2011) (bankruptcy court could enter final order on trustee's suit to determine consignor's rights in consigned goods under 11 U.S.C. § 544); In re Bigler LP, 2011 WL 3665007 (Bankr. S.D. Tex. Aug. 19, 2011) (while lien priority dispute implicated issues of state law, bankruptcy court could enter final ruling in same without need to obtain parties' consent)

7. When the Debtors filed their Chapter 13 Bankruptcy Petition, the Debtors were the fee simple owners of real estate located at 1 Blair Court, East Stroudsburg, PA 18301 (hereinafter "the property").

8. The Debtor Tamayo Mollenthien f/k/a Tamayo Matsumoto believes, and therefore aver, that the present market value of the real property at 1 Blair Court, East Stroudsburg, PA 18301 is \$126,427.00

9. PNC Bank, National Association, Successor by Merger to National City Mortgage, a Division of National City Bank retains a first mortgage lien against the property with a balance of \$330,630.37 as of the petition date.

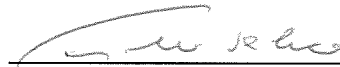
10. Defendant, MRC Recovery, Inc. entered judgment in the New York County Court, docketed at Civil Case No. 146706 in the amount of \$1,385.00 against Tamayo Mollenthien f/k/a Tamayo Matsumoto.

11. As such, MRC Recovery, Inc.'s judicial lien in New York County Court to case number 146706 in the amount of \$1,385.00 is subject to being avoided in its entirety pursuant to 11 U.S.C. Section 506(d).

12. Therefore, Defendant's judicial lien in New York County Court to case number 146706 in the amount of \$1,385.00 is subject to being avoided in its entirety pursuant to 11 U.S.C. Section 506 as the fair market value of the property is less than the first mortgage on the property.

WHEREFORE Debtor, Tamayo Mollenthien f/k/a Tamayo Matsumoto, prays the Court enter an Order approving the avoidance of the judgment against the Debtors in New York County Court to docket number 146706 in the amount of \$1,385.00 in its entirety, as the value of the property is less than the balance of the first mortgage.

Respectfully Submitted,



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Dated: 12/7/18